DRN-3626657

The complaint

Mr C complained that he was given unsuitable advice to transfer his defined benefit (DB) British Steel Pension Scheme (BSPS), to a type of personal pension plan, in 2017.

AMG Wealth Solutions LLP is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "AMG".

What happened

In March 2016, Mr C's employer announced that it would be examining options to restructure its business, including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund (PPF), or a new defined benefit scheme (BSPS2). Alternatively, members were informed they could transfer their benefits to a personal pension arrangement.

In May 2017, the Pension Protection Fund (PPF) made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr C's employer would be set up – the BSPS2.

In October 2017, members of the BSPS were being sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 11 December 2017 (and was later extended to 22 December 2017).

Mr C was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to AMG which is responsible for providing the pension advice. Information gathered about his circumstances and objectives at the time of the recommendation were broadly as follows:

- Mr C was 46 years old, married and with two dependent children. He was described as being in good health and at the time. Mrs C was 39 and also in good health.

- Mr and Mrs C lived in a home valued at around £164,000 with an approximate 12-year mortgage outstanding of around £64,000. Mr C evidently owned a part share of an elderly relative's home with his sibling. Its value was said to be around £160,000 in 2017.

- Mr C earned around £38,000 after overtime and bonuses. Mrs C also worked, although part-time. She had a small pension in place with her employer. After expenses they had some moderate disposable income left over each month. Mr and Mr C had £8,000 in joint savings, held in a cash deposit account.

- The cash equivalent transfer value (CETV) of Mr C's BSPS was approximately £273,827. The normal retirement age (NRA) was 65.

- Mr C had joined the new defined contribution (DC) scheme as a consequence of the BSPS closing to new contributions.

AMG set out its advice in a suitability report on 17 November 2017. In this it advised Mr C to transfer out of the BSPS and invest the funds in a type of personal pension plan. AMG said this would allow Mr C to achieve his objectives. Mr C accepted this advice and so transferred out. In 2021 Mr C complained to AMG about its advice, saying he shouldn't have been advised to transfer out to a personal pension.

Mr C later referred his complaint to our Service. One of our investigators looked into the complaint and said it should be upheld. In response, AMG said it hadn't done anything wrong and was acting on the financial objectives Mr C had at the time.

As the complaint couldn't be resolved informally, it's come to me for a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've also taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). Where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of AMG's actions here.

- PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

- PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

- COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

- The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability and the provisions in COBS 19 which specifically relate to a DB pension transfer.

I have further considered that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, AMG should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr C's best interests.

I've used all this information we have to consider whether transferring away from the BSPS to a personal pension was in Mr C's best interests. I have also carefully considered the final response letter from AMG. I've carefully considered too, the various other responses made to the points contained within our investigator's view.

Having done all this, I'm upholding Mr C's complaint.

Financial viability

One of Mr C's apparent objectives when seeking the pension advice was to increase his pension if possible and to invest for potential growth. I've considered whether this was achievable.

AMG referred in its transfer analysis and suitability report to 'critical yield' rates. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme. In this case, AMG used the existing scheme (BSPS) for the critical yield comparisons, rather than the 'new' BSPS2.

The critical yield comparison was a requirement from the regulator at the time when advising clients on DB transfers. It's also important to point out that the critical yield comparison is only one of a number of different metrics I've used to compare the different schemes. And in my view, these all point one way – that Mr C was probably going to receive lower pension benefits overall, as a result of transferring to a type of personal pension plan.

However, before assessing the critical yields in Mr C's case, I think it's important to point out that AMG appears to have used the comparisons with the benefits of the BSPS, rather than the new BSPS2 in its analysis document (sometimes referred to as a TVAS). However, we know BSPS was being stopped. Also, many weeks before this advice, which was dated 17 November 2017, BSPS members had been told that if the RAA was approved, they would have a choice – to move into a new scheme (BSPS2) or into the PPF with the old scheme. A newsletter had also been put on a microsite that had been set up to support BSPS members and more details of the BSPS2 had emerged by the time AMG produced its suitability report.

It's true the situation was dynamic in that some changes were being proposed at that very point, but we know a great deal about the timeline because we've seen many similar complaints to this one. And as the existing scheme (BSPS) was clearly no longer an option, using the existing scheme rather than the new one, to make comparisons with, wasn't giving Mr C the best opportunity to make an informed decision about what to do. Having said that, I think it's fair to say that despite some uncertainty at the time, the BSPS2 critical yields were likely to be between the BSPS and PPF yields, but most likely much closer to the existing scheme (BSPS). In my view, all this shows the advice probably wasn't quite as comprehensive as it ought to have been.

In my view, a further shortcoming in AMG's comparative analysis was that it more or less discounted the value of using critical yields completely. I explain more about this later, but it was basically saying to Mr C that his reasons for transferring were based on the wider and more relevant issue of obtaining flexibility, rather than just using critical yield rates to make financial comparisons between the BSPS and a personal pension plan. A good demonstration of this was that AMG only used one aspect of the critical yield rate in its suitability report for Mr C. Normally, I'd expect to see several yields, depending on whether or not the consumer was intending to take a tax-free lump sum when eventually retiring and taking their pension benefits. And if early retirement was a feature in the case, I'd also expect to see different critical yields for the NRA and also the early retirement age(s).

However, the only critical yields that found their way into AMG's suitability report, where the recommendation to transfer was set out, was firstly, the one required to match the benefits at the age of 65 in the BSPS. This was 8.03% if Mr C took a pension without a tax-free lump sum. And despite saying an early retirement was Mr C's 'number one' priority, no critical yields were included for that age (57). A second critical yield, for retiring at 65 under the PPF, was included and was 4.06%.

Having considered these figures I don't think there was any compelling evidence that achieving enough growth outside the DB scheme, to make transferring financially viable, was going to be achievable. I say this with the following in mind.

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017 was only 4.4% per year for 18 years to retirement (age 65), which is well below the critical yield figure of 8.03% I've referred to above. This implies annual growth would fall considerably short of what Mr C needed to make a transfer financially viable.

I've also kept in mind that the regulator's upper projection rate at the time was 8%, the middle projection rate was 5%, and the lower projection rate was 2%. However, we were in a sustained period of low interest rates and bond yields in 2017 and these growth projections hadn't been updated for some time; if anything the realistic growth projections would have been lower. At the time, AMG assessed Mr C's attitude to risk (ATR) as "low" and it also quoted a mid-growth assumption for the fund it was recommending that Mr C ought to transfer his money to as being 1.5% per year.

I therefore don't think the adviser had enough information or evidence to recommend transferring away from a DB scheme based on a financial comparison basis. Growth assumptions close to the regulator's lower projections and also to the discount rate were most relevant here in my view. And even the funds' own 'mid-rate' projection was relatively low. So, I think growth assumptions of around 1½-to-4½% were much more realistic. These were substantially below the critical yield figure for the BSPS, so I think this showed that achieving the critical yield, year-on-year, upon transferring out, was very unlikely.

As I've said, elsewhere in its transfer analysis AMG also made mention of the PPF which it described as a compensation scheme providing a *"safety net"* for pension schemes when the sponsoring employer becomes insolvent. AMG said the critical yield to match the benefits available through the PPF at age 65 was lower. But this yield related to the *reduced* benefits available with the PPF and AMG itself says Mr C wouldn't have wanted to transfer to this scheme. It's also important to remember here that the effect of charges and fees associated with a personal pension such as the one being recommended to Mr C, would have further reduced the likely growth.

I've also noted that using the NRA of 65, AMG's own transfer analysis said even to purchase an annuity to provide benefits of equal value to the estimated benefits provided by the existing scheme, assuming *no* spouse's pension, *no* increases in payment and *no* guarantee at retirement, the estimated fund required at 65 was £395,084. To reiterate, these figures are found in AMG's own analysis based on data the regulator required businesses to refer to at the time. And because these figures are far above Mr C's CETV, they represent, in my view, a revealing window into the value of the guaranteed pension Mr C could be giving up by transferring away to a personal plan, rather than a similar DB scheme that was on offer here.

I therefore think it's fair to say that from a financial comparison perspective, AMG's own figures, shown in its suitability report and transfer analysis documents, showed that transferring to a personal pension plan would mean Mr C would likely receive lower pension benefits in the longer term, when compared against the BSPS. But as I've said, AMG should have waited and recalculated the comparisons for Mr C when the situation with BSPS2 became clear – we know this was available at the time.

I've also considered some projections AMG used to help show that if he transferred out to a personal plan, the funds could last Mr C well into retirement. I think most of these were based on growth projections which were based on past performance. They also showed scenarios which saw Mr C running out of funds in his 90s whilst his DB scheme was guaranteed for his whole life. It's also fair to say these were not comparing like-with-like. What AMG was showing Mr C were comparisons with plans which lacked the guarantees and benefits of a DB scheme.

Of course, according to AMG, its recommendation that he should transfer out to a personal pension was not wholly based on the financial comparisons with his current scheme alone. Rather, AMG said Mr C also had other reasons to transfer away, so I've thought about all the other considerations which might have meant a transfer was suitable for him, despite providing the overall lower benefits mentioned earlier.

I've considered these below.

Other needs and objectives

AMG recommended a transfer to a personal pension plan based on what it said were Mr C's wider objectives. I have used all the documents we still have from the advice sessions to summarise the following themes as supporting the recommendation to transfer away:

- To retire early at the age of around 57.
- To have flexibility over the way that he could access future benefits. To potentially access tax free lump sum in his mid-fifties, to fund university fees.
- To have control over options for death benefits.
- Security of pension / break all ties due to concerns regarding financial stability of employer.

I have therefore considered all these issues in turn.

Retiring early

I've taken into account that Mr C approached AMG for advice because of the uncertainties he faced with the BSPS. He clearly didn't want to enter the PPF.

But I think it's important to focus for a moment here on Mr C's comparatively young age by pension standards. Whilst I'm sure, like most people, Mr C probably wanted to stop working as early as possible, I think what he and the adviser discussed could only ever have been general retirement aspirations on his part.

I say this because Mr C was only 46 and he still had up to 18 years left before the NRA. In my view, this could still be referred to him being only 'mid-career'. I accept that Mr C himself may have gone to the advice sessions thinking retiring at 57 seemed like an attractive idea, but AMG's job here wasn't to simply transact what Mr C, a man with very limited investment experience, thought sounded good. AMG was being paid for this advice and Mr C had every right to expect the adviser would use their experience and skills to recommend what was in his overall best interests.

In reality, because he was only 46 (and Mrs C was still only 39) there were still a lot of different permutations that life could present them with. We know, for instance, that Mr and Mrs C had two relatively young children. So, as set out in the documents from the time, in referring to funding a university education by using his future pension monies, this seemed premature. Mr C wouldn't even have reached the lowest age allowed to access a personal pension by the time he older of his children had already attended university - if they did so at all. So using his transferred pension to fund this was clearly flawed.

I also think Mr and Mrs C's priority would have been to first see their children, who were only 12 and 10 at the time, through their primary and secondary education and then eventually into employment. Given their ages, this was probably still several years away. Mr and Mrs C also still had a mortgage outstanding with over a decade still left to pay on it and although much was made of Mr C part-owning his elderly relative's home, I've seen no evidence of what the circumstances of this arrangement actually were. I think assuming a straightforward 50% inheritance of this property was probably dependent on a number of potential outcomes in the years ahead. These might have included caring costs which could have substantially affected the inheritance.

So, all this demonstrates the pitfalls in assuming a future retirement whilst still only 46, when in reality even a very early retirement was still many years away. In any event there was no real analysis from AMG around what Mr and Mrs C's retirement income would need to be in order to achieve a comfortable lifestyle for when he eventually stopped work.

In my view, the adviser also portrayed the DB scheme opportunity Mr C had with the proposed BSPS2 in a negative dimension. The implication was that transferring to the BSPS2 was somehow too restrictive for Mr C and therefore unsuitable for him. Remaining in a DB scheme, such as the BSPS2, and then accessing it earlier than the NRA, was portrayed as a 'penalty' rather than an actuarial reduction caused by accessing his pension earlier and for longer.

All this means that with so long left to when he'd be actually contemplating retiring, there's simply no way that what he might possibly use the money for should have been a major influence in him deciding to irreversibly move away from a DB scheme. Doing so involved an investment risk which I've showed above could mean lower overall financial benefits at retirement. In reality, there was no costed or concrete plan to retire early. It was simply far too early to speculate about this.

Flexibility and control

I also can't see that Mr C required flexibility in retirement in the way the adviser suggested. In any event, flexibility was poorly defined by AMG. I've already demonstrated above how an apparent use for some of the funds hadn't been properly thought through.

I therefore think this was no more than a 'stock' objective used to help justify the recommendation to transfer out to a personal plan. For example, I've seen nothing that showed Mr C required changing how his retirement benefits ought to be paid. He already had a new and more flexible DC pension with his existing job as a consequence of the old BSPS scheme being closed to new contributions. This DC pension was being significantly contributed towards by both Mr C and his employer - 6% and 10% respectively and still had up to 18 years left to run (over 10 years if he did eventually retire very early). He also appeared in 2017 to have some capacity to increase contributions to this scheme if he wanted to. So, this secondary pension would have afforded Mr C any flexibility he might have needed in the years ahead.

This means I've seen nothing explaining why Mr C wouldn't want to continue membership of a DB scheme and to use that scheme in exactly the way it was originally intended. Indeed, I think that by retirement, whenever it eventually came, Mr C could have been in a very agreeable position. On one hand he'd have an existing deferred DB scheme of considerable value. This would contain all the guarantees and benefits that such schemes normally bring which tend to include a promise to pay a known pension for life. Significant indexation guarantees also existed within BSPS2 and the scheme was still underpinned by the PPF. On the other hand, he'd have also built up a substantial DC scheme over a long period of time – 10 -to- 18 years depending on his eventual retirement age. So, if Mr C ever found he needed so-called flexibility, then he'd be able to use the latter, rather than transferring away from the former.

I've also seen no evidence that Mr C had either the genuine capacity or desire to exercise control over his funds. With his DB scheme, Mr C was being offered the opportunity to transfer to the new BSPS2. It's true there were some differences in this scheme when compared to the original BSPS, but it remained a DB scheme nonetheless and was run for him by trustees. Mr C himself had absolutely no experience of these types of 'money market' investments and I think he would have found the complexity, scale and responsibility of managing over £273,000 of transferred funds to be onerous in the years ahead. What I've seen tends to show Mr C would have required ongoing financial advice and support, all of which would cost him money which his DB scheme didn't require from him. I've considered that Mr C had a DC pension with TATA. But there's no evidence that the investment strategy for this was anything other than an 'off the shelf' fund selection which involved no direct participation from Mr C himself.

AMG itself set out the estimated pension he'd get under the BSPS. In my view, this showed a reasonable income. Of course, I've already explained the unpredictability of assessing retirement needs so far in advance and at such a young age. AMG's analysis said that if retiring at 65, Mr C could expect an annual pension of around £17,659. But even though AMG is adamant that Mr C wanted to retire aged 57, it didn't show him any annual pension he'd get at this age. And it certainly isn't unreasonable to say that by then, Mr C could have built up a substantial amount in his 'new' DC fund. So, I don't think there's anything showing Mr C's pension entitlements wouldn't have met his financial requirements in retirement, without any need to transfer from a DB scheme.

These were BSPS figures, but that doesn't really matter because current members were being given similar estimates about the new scheme (BSPS2) at around the very time this advice was being sought. I don't think AMG adequately explained these things to Mr C as its advice simply discounted him transferring to the new scheme to obtain flexibility which was poorly defined and which he didn't need.

I therefore think Mr C's circumstances here were much more aligned to him transferring to BSPS2 and retiring from that when he felt he was ready to do so. All the evidence pointed to him still being able to retire earlier than 65 if he felt he really needed to – there would have been an actuarial reduction involved, depending on his age at the time. But because he also had a smaller 'second' DC pension, this supported that strategy in my view.

Death benefits

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The BSPS2 contained certain benefits payable to a spouse and children if Mr C died. Mr C was married and had children so I think the value of these benefits were most likely underplayed because the spouse's pension provided by the BSPS2 would have been useful to Mrs C if he predeceased her. The information tends to suggest she wouldn't receive a large pension of her own. So I don't think AMG made the value of this benefit clear enough. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

The adviser told Mr C that he'd be able to pass on the value of a personal pension, potentially tax-free, to anyone he nominated. So, the lump sum death benefits on offer through a personal pension was probably made to look like an attractive feature to Mr C.

But whilst I appreciate death benefits are important to consumers, and Mr C might have thought it was a good idea to transfer the BSPS to a personal pension because of this, the priority here was to advise him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think AMG explored to what extent Mr C was prepared to accept a lower retirement income in exchange for different death benefits.

Mr C was only 46 and in good health. An obvious drawback with a personal plan's death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. To this end, if Mr C had lived a long life there could be nothing left at all in his personal pension plan.

Although I've questioned the ability to forecast an early retirement whilst still so young, there's no real doubt that retiring at 57 was at least mentioned. The adviser should have therefore additionally known that a healthy male retiring at 57 would likely have many years ahead in which he would be drawing down his pension funds thus leaving very little left to pass on to someone.

I note life insurance was discussed in this case. He already had some life insurance anyway. But at 46 years old, another modest 'term' life insurance policy may have still been a reasonably affordable product if Mr C really did want to leave a large legacy for a specific relative or someone else. But more so, it doesn't appear that AMG took into account the fact that Mr C could have nominated a beneficiary of any funds remaining in his other (TATA) DC scheme. So, to this end, Mr C already had plenty of options ensuring part of his pension wouldn't 'die with him'.

Overall, in this case I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr C. I think this objective, listed as it was in the suitability report, was no more than a generic comment and not meaningful to Mr C's situation.

Concerns over financial stability of the DB scheme

It's clear that Mr C, like many employees of his company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and AMG said he lacked trust in the company. He'd heard negative things about the PPF and AMG said he could have more control over his pension fund.

So, it's quite possible that Mr C was also leaning towards the decision to transfer because of the concerns he had about his employer and a negative perception of the PPF. However, it was AMG's obligation to give Mr C an objective picture and recommend what was in his best interests.

By the point of the advice being delivered details of BSPS2 were known and it seemed likely it was going ahead. So, I think this should have alleviated any concerns about the scheme moving to the PPF.

However, even if there was a chance the BSPS2 wouldn't go ahead, I think that AMG should have reassured Mr C that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr C through the PPF would have still probably provided a significant portion of the income he would have needed at retirement, and he was still unlikely to be able to exceed this by transferring out, given his ATR and the effect of pension charges and fees. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should have led to AMG's recommendation to Mr C to transfer out of the DB scheme altogether.

Suitability of investments

AMG recommended that Mr C invest his funds in a personal pension. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr C and I don't think he would've insisted on transferring out of the scheme if clear advice had been given to him, it follows that I don't need to consider the suitability of the investment recommendation. This is because he should have been advised to remain in the DB scheme and so the investment in the new funds wouldn't have arisen if suitable advice had been given.

Summary

I don't think the advice given to Mr C was suitable.

He was giving up a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a personal pension, the evidence shows Mr C was likely to obtain lower retirement benefits. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. I think AMG ought to have advised him against transferring out of his DB scheme for this reason, particularly as it meant he'd be worse off in retirement.

So, I don't think it was in Mr C's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2.

AMG says that at the time BSPS2 didn't yet exist and it implies that it couldn't recommend that Mr C should transfer to this. This simply isn't accurate and is demonstrative of AMG's failures in this case. At the time of the advice, it was clear to all parties that the BSPS2 was likely to be going ahead and there was an unambiguous choice available for employees to choose that option.

Mr C also still had many more years before he intended to retire and AMG recommended he transfer away based on flawed objectives which didn't fit with Mr C's circumstances. These were no more than 'stock' objectives used by the adviser to justify its advice.

I also don't think that it would have been in his interest to accept the reduction in benefits he would have faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. By opting into the BSPS2, Mr C would have retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

On this basis, I think AMG should have advised Mr C to opt into the BSPS2.

I have considered, given the circumstances of the time, whether Mr C would have transferred to a personal pension in any event. I accept that AMG disclosed some of the risks of transferring to Mr C, and provided him with a certain amount of information. But ultimately it advised Mr C to transfer out, and I think Mr C relied on that advice.

I'm not persuaded that Mr C would have insisted on transferring out of the DB scheme, against AMG's advice. I say this because Mr C was an inexperienced investor and this pension accounted for most of his retirement provision at the time. So, if AMG had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would have accepted that advice.

I'm also not persuaded that Mr C's concerns about the PPF were so great that he would have insisted on transferring his pension, knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. So if AMG had explained Mr C was also unlikely to exceed the benefits available to him through the PPF if he transferred out, and that he could meet his income needs in retirement without risking his guaranteed pension, I think that would have carried significant weight.

In light of the above, I think AMG should compensate Mr C for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be for the business to put Mr C, as far as possible, into the position he would now be in but for AMG's unsuitable advice. I consider Mr C would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice and compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance. AMG should use the benefits offered by BSPS2 for comparison purposes.

AMG must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

AMG should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr C and our Service upon completion of the calculation.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr C's acceptance of my final decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, AMG should:

- calculate and offer Mr C redress as a cash lump sum payment,
- explain to Mr C before starting the redress calculation that:

    - their redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr C receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr C accepts AMG's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr C for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr C's end of year tax position.

Redress paid to Mr C as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, AMG may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr C's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

Our investigator recommended that AMG should pay Mr C for the distress and inconvenience caused by the unsuitable advice. I have considered the impact this would likely have had on Mr C in his particular circumstances. This pension at the time represented nearly all his retirement provision. In his situation I think the thought of losing material benefits would have impacted heavily upon Mr C. So I agree the recommended payment of £300 for distress and inconvenience. AMG should pay Mr C this amount in addition to the redress I've set out above.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

My final decision

<u>Determination and money award</u>: I am upholding this complaint and I now direct AMG Wealth Solutions LLP to pay Mr C the compensation amount as set out in the steps above, up to a maximum of £160,000.

<u>Recommendation:</u> If the compensation amount exceeds £160,000, I also recommend that AMG Wealth Solutions LLP pays Mr C the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr C.

If Mr C accepts my final decision, the money award becomes binding on AMG Wealth Solutions LLP.

My recommendation would not be binding. Further, it's unlikely that Mr C can accept my decision and go to court to ask for the balance. Mr C may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 18 October 2023.

Michael Campbell
Ombudsman